

APPEAL NO. 033078
FILED JANUARY 9, 2004

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on October 30, 2003. The hearing officer determined that the appellant (self-insured) waived the right to contest compensability of the respondent's (claimant) claimed injury by failing to timely contest the claimed injury pursuant to Section 409.022; that because the self-insured waived the right to contest compensability, the claimant sustained a compensable low back repetitive trauma injury; and that the claimant had disability from December 6 through December 26, 2002.

The self-insured appealed, contending that there was no carrier waiver because the claimant's notice was inadequate and that, because the claimant did not sustain an injury, the case of Continental Casualty Company v. Williamson, 971 S.W.2d 108 (Tex. App.-Tyler 1998, no pet.), applies. The claimant responds, urging affirmance.

DECISION

Affirmed.

Although the self-insured appealed all the adverse determinations, the primary focus of the appeal was the carrier waiver issue. The self-insured contends that it did not waive the right to contest compensability because the claimant's notice of injury was only of pain and "[s]imply notifying the Carrier of pain is not notice of an injury." However, the self-insured disregards its own Payment of Compensation or Notice of Refused/Disputed Claim (TWCC-21), which states that the self-insured's first written notice of injury was received on "7/31/01." The TWCC-21 was filed with the Texas Workers' Compensation Commission on August 9, 2001, which is not within the seven days of first written notice required by Section 409.021 as interpreted by Continental Casualty Company v. Downs, 81 S.W.3d 803 (Tex. 2002).

The self-insured also argues that waiver cannot create a compensable injury where there is no evidence of an injury pursuant to Williamson, *supra*. In this case, there was clearly evidence of an injury, as defined in Section 401.011(26), in the form of MRI results and an operation report of a herniated disc. The self-insured's appeal is without merit.

Because we are affirming the hearing officer's determination of a compensable injury, and there is no specific appeal regarding the hearing officer's disability determination, we also affirm the disability determination.

We have reviewed the complained-of determinations and conclude that the hearing officer's determinations are so not against the great weight and preponderance

of the evidence as to be clearly wrong or manifestly unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986).

We affirm the hearing officer's decision and order.

The true corporate name of the insurance carrier is **STATE OFFICE OF RISK MANAGEMENT (a self-insured governmental entity)** and the name and address of its registered agent for service of process is

For service in person the address is:

**RON JOSSELET, EXECUTIVE DIRECTOR
STATE OFFICE OF RISK MANAGEMENT
300 W. 15TH STREET
WILLIAM P. CLEMENTS, JR. STATE OFFICE BUILDING, 6TH FLOOR
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For service by mail the address is:

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Thomas A. Knapp
Appeals Judge

CONCUR:

Judy L. S. Barnes
Appeals Judge

Chris Cowan
Appeals Judge